

104 FERC ¶ 61,107  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Southern Star Central Gas Pipeline, Inc.

Docket Nos. CP02-416-000  
and CP02-416-001

ORDER ADDRESSING REQUESTS FOR RECONSIDERATION,  
AMENDING PRIOR ORDER TO MODIFY APPROVED PIPELINE ROUTE,  
AND DENYING STAY

(Issued July 14, 2003)

1. On March 12, 2003, the Acting Director, Division of Pipeline Certificates, Office of Energy Projects issued a certificate pursuant to § 375.308(1)(v) <sup>1</sup> of the Commission's regulations and Section 7 of the Natural Gas Act (NGA) to Southern Star Central Gas Pipeline (Southern Star) to construct and operate certain facilities in Cherokee County, Kansas and Jasper and Newton Counties, Missouri (Director's order).<sup>2</sup> Mr. Rex Chambers and Four-Scorse Investment Corporation (Scorse), landowners with property on the certificated pipeline route, filed requests for reconsideration of the Director's order.<sup>3</sup> The landowners request modifications to the proposed route.

2. As discussed below, we find that Mr. Chambers' proposed alternative pipeline route will increase environmental impacts and is not environmentally superior to the certificated route. However, we find Scorse's proposed alternative route would accommodate Scorse's request without significantly greater environmental disturbance and is preferable under Commission policy. Accordingly, we find that it is in the public

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<sup>1</sup>18 C.F.R. § 375.308(v)(1) (2003).

<sup>2</sup>Southern Star Central Gas Pipeline, Inc., 102 FERC ¶ 62,165 (2003).

<sup>3</sup>Mr. Chambers filed comments and a request for rehearing. Scorse filed a motion to intervene out-of-time, a request for relief, and a request for rehearing. As discussed in the order, the Commission is denying the motion to intervene out-of-time and will treat the filings as requests for reconsideration.

interest to modify the certificated pipeline route across the Scorse property, as described below.

### **Background**

3. Southern Star<sup>4</sup> filed an application requesting authorization to construct and operate approximately 15.67 miles of 20-inch-diameter pipeline from its Southern Trunk 20-inch Loop Line "FR" to an interconnect with an existing 16-inch-diameter lateral which serves Empire District Electric Company's State Line power plant. Included in the application, in accordance with the Commission's regulations, was a list of affected landowners that Southern Star notified of the pending application. The notification informed the landowners how to participate in Southern Star's proceeding before the Commission. Additionally, the Commission's Staff issued a Notice of Intent to Prepare an Environmental Assessment of the Project (NOI) on September 11, 2002. The NOI also explained how an individual could participate in the certificate proceeding. This notice was sent to all of the landowners listed in the application.

4. The Commission's staff prepared an Environmental Assessment (EA) for the proposed project. The EA addressed the comments received in response to the NOI. The EA determined that if the proposed pipeline was constructed and operated in accordance with Southern Star's application, including supplements, and the environmental conditions in the EA and the March 12 order, it would not constitute a major Federal action significantly affecting the quality of the human environment. As such, a certificate of public convenience and necessity was issued to Southern Star in the March 12 order authorizing it to construct the proposed facility along the proposed route.

### **Procedural Issues**

#### **A. Subsequent Filings**

5. Mr. Chambers filed comments and a request for rehearing. Scorse filed a motion to intervene out-of-time, a request for relief, and a request for rehearing. Southern Star filed an answer opposing the motion to intervene out-of-time and a motion for leave to file a response and a response to the requests for rehearing. Mr. Chambers filed a rebuttal to Southern Star's opposition to the motions to intervene out-of-time and a request that the Commission stay any further proceedings with respect to Southern Star's certificate until

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<sup>4</sup>Southern Star was formerly known as Williams Gas Pipelines Central, Inc. (Williams Central). On November 15, 2002, Williams Central was acquired by Southern Star Central Corp., a subsidiary of AIG Highstar Capital, L.P.

it acts on the landowner's concerns. Scorse filed comments on Southern Star's opposition to the motion to intervene out-of-time and a motion for leave to reply and a reply to Southern Star's response to requests for rehearing. Southern Star filed a response to Mr. Chamber's request for a stay. Norman L. and Mary G. Hayes filed comments after the order was issued. Additionally, five landowners, Mr. Chambers, Scorse, Paul Lunderman, Leon King, and Richard Phipps filed a document asserting that they never received notice of Southern Star's application as is required under the Commission's regulations.

**B. Notice/Motion to Intervene Out-of-Time**

6. Several individuals contend that they did not receive notice from the pipeline or the Commission concerning the proposed project. Southern Star's application included the names and addresses of the landowners it notified concerning the proposed project. All the affected landowners of record, who stated that they did not receive notice are on Southern Star's list of notified landowners. Additionally, we note that the Commission sent its NOI to the same list of landowners. None of the notifications sent to the landowners by the Commission Staff were returned as undeliverable.

7. Moreover, in addition to the notice of the application that was published in the Federal Register on August 14, 2002,<sup>5</sup> notice of the filing was published in the Joplin Globe on August 21 and August 22, 2002. Instructions on how to contact the Commission were included in the newspaper notices. Copies of the application were also made available for residents of Cherokee County in the City of Columbus Public Library in Columbus, Kansas and for residents of Jasper County, in the Joplin, Missouri Public Library in Joplin, Missouri.

8. Mr. Chambers states that he did not receive notice of the proposed project. Notice of the proposed project and the NOI were sent to Mr. Chamber's brother, Max Douglas Chambers, who is the landowner of record listed on the tax rolls. Southern Star states that all official letters, including the NOI, were sent to Max Chambers, however at his direction, Southern Star conducted all negotiations for the pipeline easement on the

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<sup>5</sup>67 Fed. Reg. 52965. While notice in the Federal Register is admittedly of limited effectiveness in reaching the public at large, such notice is legally sufficient. See ANR Pipeline Co., 55 FERC ¶ 61,481 at 62,594 (1991). We also note that the NOI was published in the Federal Register and provided to local libraries.

Chambers' property with his brother, Mr. Rex Chambers.<sup>6</sup> Additionally, Mr. Chambers contacted the Commission Staff and Southern Star concerning possible re-route prior to the issuance of the Director's order.

9. In its motion to intervene out-of-time, Scorse claims that it recently learned of the proposed pipeline on its property and that it did not receive any of the notices. Scorse states that the Southern Star's right-of-way personnel did not advise it of the pending application or that Scorse had the right to file comments. Scorse asserts that it did not know that it could intervene in this proceeding and that it had sent two letters to Southern Star objecting to the proposed route. It also suggested alternatives to Southern Star's proposed route.

10. When late intervention is sought after the issuance of an order disposing of an application, the prejudice to the other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for the granting of such late intervention.<sup>7</sup>

11. We find that there was sufficient opportunity for all the affected landowners to have received notice and comment on the proposed project. Further, we note that as a result of Mr. Chambers' and Scorse's filings, the Commission has re-evaluated the pipeline route and issued a supplemental EA that analyzes the alternative routes proposed by Mr. Chambers and Scorse. Accordingly, we find that the landowner's concerns have been adequately addressed and we will deny Scorse's motion to intervene out-of-time.

### **C. Requests for Rehearing/Relief**

12. Since we have denied Scorse's motion to intervene out-of-time, and Mr. Chambers did not file a request to intervene, they are not parties to this proceeding. Therefore, they lack standing under the Commission's regulations to seek rehearing of the Director's order.<sup>8</sup> We will, however, treat the requests for rehearing as requests for reconsideration,

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<sup>6</sup>See Southern Star's Answer In Opposition to Post-Decisional Motions to Intervene out-of-Time, at 5 n.1, and the Rebuttal to Southern Star's Answer filed by Mr. Rex Chambers.

<sup>7</sup>18 C.F.R. § § 385.214(d)(1)(ii), 214(d)(1)(iv) (2003); North Baja Pipeline, L.L.C., 99 FERC ¶ 61,028 (2002).

<sup>8</sup>See 18 C.F.R. § 385.713(b) (2003).

since these filings raise issues about the pipeline route that were not previously considered.<sup>9</sup>

**D. Answers to Answers**

13. Several of the filings made in this proceeding could be classified as answers to answers. Although the Commission's procedural rules prohibit answers to answers, we may, for good cause, waive this provision.<sup>10</sup> In this instance, we find good cause to do so in order to provide information that clarifies the issues and aids us in our decision making. Accordingly, we will accept all filings into the record.

**E. Request for Stay**

14. Mr. Chambers requests that the Commission stay Southern Star's certificate until his concerns have been properly heard. Since the Commission is addressing Mr. Chambers' concerns in this order, his request for a stay is denied.

**Discussion**

15. In their requests for reconsideration, Mr. Chambers and Scorse raised issues about route alternatives that were not considered in the EA issued in this proceeding. In response, the Commission Staff made an additional visit to the Chambers and Scorse properties on May 28, 2003. The Commission Staff also prepared a supplement to the EA that discusses Mr. Chambers' and Scorse's proposed route alternatives.<sup>11</sup>

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<sup>9</sup>We note that while NGA Section 19(a) provides that an aggrieved person may seek timely rehearing of a Commission order, addressing Mr. Chambers' and Scorse's filings does not convey party status.

<sup>10</sup>18 CFR § 385.213(a)(2) (2003).

<sup>11</sup>The remainder of the EA issued in this proceeding is still applicable as certificated and stands unrevised, including the environmental conditions in the Appendix to the March 12 order and the EA.

**A. Mr. Chambers' Route Alternative**

16. Mr. Chambers contends that the certificated route would affect his plans for future development of his property and would restrict his ability to build roads to access his property. In response, Southern Star states that no official plans for the subdivision or development of this property has been filed with Cherokee County.

17. The supplemental EA contains a table comparing the environmental variables between Mr. Chambers' route alternative and Southern Star's certificated route. Mr. Chambers' route alternative would be longer, would affect more forest, would increase impacts on habitat for state-listed sensitive species,<sup>12</sup> and has some steeper slopes, and rockier terrain than the certificated route. In addition, Mr. Chambers' route alternative would affect another landowner. Therefore, we find that Mr. Chambers' proposed alternative pipeline route would increase environmental impacts and is not environmentally superior to the certificated route. Accordingly, Mr. Chambers' request to modify the certificated route is denied.

**B. The Scorse Route Alternative**

18. Scorse proposed several alternatives to the certificated route. During the May 28 site visit, Scorse agreed to a modified re-route as its preferred alternative. The supplemental EA analyzes this alternative in comparison to the certificated route.<sup>13</sup> The Scorse preferred alternative route generally parallels an existing right-of-way and property lines. In comparison the certificated route traversed diagonally through the tract. The Commission generally prefers pipeline routing along existing road or utility rights-of-way, whenever possible, over creating a new greenfield pipeline right-of-way.<sup>14</sup>

19. Although the Scorse route alternative is slightly longer, in general, all other environmental factors concerning these routes are roughly equal. Both the certificated

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<sup>12</sup>Mr. Chambers' route alternative was surveyed by a representative of the Kansas Department of Wildlife and Parks (KDWP), and, in a letter dated April 10, 2003, the KDWP indicated that the re-route would cross critical habitat for the Broadhead Skink and Northern Redbelly Snake. Mr. Chambers' route alternative would require that Southern Star acquire an additional 0.35 acre of woodlands to be set aside for mitigation on the impact on the Broadhead Skink and Northern Redbelly Snake.

<sup>13</sup>Table 2 of the supplemental EA compares the environmental variables between the Scorse preferred route alternative and Southern Star's certificated route.

<sup>14</sup>See Islander East Pipeline Co., 102 FERC ¶ 61,054 at P 133 (2003).

route and the Scorse route alternative would cross similar land; grassland used for livestock pasture, with no impacts on forest or critical habitat. Both the Scorse route alternative and the certificated route would cross under the existing Empire powerline once. The certificated route would cross one wetland, and pass nearby another, while the Scorse alternative route would pass near just one wetland. No other landowner would be affected by the route alternative; it would be entirely within the Scorse tract. Therefore, we find Scorse's proposed alternative route would accommodate its request without significantly greater environmental disturbance and is preferable under Commission policy. Accordingly, we will modify the certificated pipeline route to the Scorse alternative discussed in the EA.

### **C. The Hayes Comment Letter**

20. The Hayes filed a comment letter on April 28, 2003, generally expressing concern over the easement negotiations. First, they raise an issue concerning Southern Star's offer for an easement on their property and potential damage to their property. Property values and damages are not issues adjudicated by this Commission. Generally, compensation for the granting of a pipeline easement is determined as the result of negotiations between the pipeline company and the landowner. These negotiations could potentially include compensation for damage to the property or for any perceived loss of property value.<sup>15</sup>

21. If an easement cannot be negotiated with the landowner, the company may exercise in court the right of eminent domain granted to the pipeline under Section 7(h) of the NGA. In an eminent domain proceeding, the court will require the pipeline to compensate the landowner for the right-of-way, as well as for any damages incurred during construction. The level of compensation would be determined by the court according to the state laws that set forth the procedures for the use of eminent domain once the Commission issues a certificate.

22. Second, the Hayes state that the easement Southern States was asking them to sign described their whole 40 acres of ground. While the pipeline is free to negotiate additional rights in their easement agreements with the landowners, the Commission believes that the landowners have a right to know the specific area the Commission has authorized the pipeline to take and the specific activities the Commission has authorized for that property before they begin any negotiations for the easement. Southern Star

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<sup>15</sup> See, e.g., Appeal of Giesler, 622 A. 2d 408 (1993).

should clearly explain and delineate what is specifically covered by the Commission's certificate.<sup>16</sup>

23. Finally, the Hayes were concerned that Southern Star would not move the location of the pipeline to their preferred location as discussed in the original EA. On April 10, 2003, Southern Star filed alignment sheets showing that the route was moved south of the powerline across the Hayes' property. Additionally, we note that Environmental Condition 14 listed in the March 12 order, specifically deals with issues raised by the Hayes in their comments in response to the NOI.

The Commission orders:

(A) The Director's order issued on March 12 and Southern Star's certificate authorization are amended to modify the approved pipeline route on the Scorse property, as described above.

(B) Southern Star shall file with the Secretary a revised alignment diagram that shows the modified route on Scorse's property for the review and written approval of the Director of the Office of Energy Projects prior to construction.

(C) The Scorse motion to intervene out-of-time is denied.

(D) The requests for reconsideration are granted, in part, and denied, in part as discussed in the order.

(E) All filings are accepted into the record.

(F) The request for a stay is denied.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>16</sup>See Vector Pipeline L.P., 87 FERC ¶ 61,255 at 61,904 (1999).